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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

999 18th STREET - SUITE 500  
DENVER, COLORADO 80202-2405



MAY 9 1991

VIA HAND DELIVERY

Ref: 8RC

Jon C. Nickel  
Industrial Quality Manager  
ASARCO Incorporated  
P.O. Box 1230  
East Helena, Montana 59635

RE: Notice of Liability and Transmittal of  
Administrative Order on Consent Pursuant to CERCLA  
Sections 106 and 107 - East Helena Site

Dear Mr. Nickel:

The United States Environmental Protection Agency, Region VIII ("EPA"), is considering the expenditure of public funds to abate, minimize, stabilize, mitigate, and/or eliminate the release and threatened release of hazardous substances, pollutants, and/or contaminants into the environment at the East Helena Superfund site, located in East Helena, Montana (the "Site"). Unless EPA determines that a responsible party will perform such actions properly and promptly, EPA intends to do so pursuant to section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9604 (1982), as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA).

Responsible parties under CERCLA include current and past owners and operators of facilities from which there is, or may be, a release or threatened release of a hazardous substance, and persons involved in the generation, treatment, transportation, or disposal of hazardous substances. Under section 106(a) of CERCLA, 42 U.S.C. § 9606(a), and other laws, responsible parties may be required to implement response actions with EPA oversight. In addition, under section 104 of CERCLA, 42 U.S.C. § 9604, EPA may undertake response actions. Under section 107 of CERCLA, a responsible party or parties may be liable for all costs incurred by the government in responding to any release or threatened release of hazardous substances. Such costs include, but are not limited to, expenditures for investigation, planning, oversight of private party response actions, cleanup of the Site, and enforcement.

EPA has determined that a release of hazardous substances, pollutants, and/or contaminants as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14), has occurred and threatens to continue in the future at the Site. Hazardous substances,



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including lead, cadmium, and arsenic have been detected at the Site and are contaminating or pose a threat of contamination of residential soils, surface water, and ground water at the Site. Hazardous substances, pollutants, and contaminants located on, or adjacent to, the Site may present a threat to human health, welfare, and the environment.

EPA has reason to believe that ASARCO Incorporated ("Asarco") is a potentially responsible party at the Site, from which this release or threatened release is occurring, or may occur, within the meaning of section 107 of CERCLA, 42 U.S.C. § 9607. By this letter, EPA notifies you of your potential liability with regard to this matter and encourages you to voluntarily undertake clean-up activities which will be overseen by EPA and/or other government agencies.

To abate the release or threat of release and the threat to the environment resulting from that release or threat of release, EPA plans to take action including soil sampling, analysis, and excavation, and other such actions as may be necessary to abate the threat. EPA will consider, however, a timely offer from you to conduct these actions. Please be advised that any participation on your part is subject to EPA approval and oversight. Participation must be under direct EPA control to permit coordination with other EPA actions pertaining to the Site.

#### DECISION NOT TO USE SPECIAL NOTICE

Under Section 122(e) of CERCLA, EPA has discretionary authority to invoke special notice procedures to formally negotiate the terms of an agreement between EPA and potentially responsible parties (PRPs) to conduct or finance response activities. Use of these special notice procedures triggers a moratorium on certain EPA activities at the Site while formal negotiations between EPA and the PRPs are conducted.

In this case, EPA has decided not to invoke the Section 122(e) special notice procedures because use of these procedures would likely delay implementation of the removal action. Nonetheless, EPA is willing to discuss settlement opportunities without invoking a moratorium. EPA will, however, initiate the response action as planned if such discussions do not lead to an expeditious settlement.

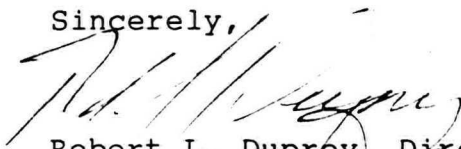
As the basis for settlement discussions, I have enclosed the proposed Administrative Order on Consent (Order) between EPA and Asarco for the Site. This Order concerns the performance of removal activities by Asarco and reimbursement of response costs incurred by EPA in connection with the removal.

If you wish to conduct or participate in actions as outlined above, you must, within five days of your receipt of this letter, notify Mr. Scott Brown, Remedial Project Manager (RPM), in writing, of your wish to participate. Mr. Brown will coordinate your involvement in the development of the Order. If an agreement cannot be reached, EPA may decide to issue a Unilateral Administrative Order directing you to conduct the removal action. If you do not write Mr. Brown within the five-day period, EPA will assume that you decline any involvement in the removal action. EPA may initiate action at the Site, if EPA determines that immediate action is necessary to abate the release of hazardous substances. EPA may continue such actions if no responsible party agrees to perform the necessary work.

Please be advised that the factual and legal discussions contained in this letter are intended for notification and information purposes only. They are not intended to be, and cannot be relied upon, as a final EPA decision or binding upon EPA concerning any matter discussed.

In closing, EPA would like to encourage you to conduct or participate in removal actions for the Site, and appreciates your continued cooperation with Site cleanup. If you have any questions regarding either this letter or the removal actions, please contact either Suzanne Bohan, Assistant Regional Counsel, at (303) 294-7552, or Scott Brown at (406) 449-5414.

Sincerely,



Robert L. Duprey, Director  
Hazardous Waste Management Division

Enclosure

cc: Suzanne J. Bohan, 8RC  
D. Scott Brown, 8MO  
Cynthia S. Leap

CONCURRENCE COPY



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

0250414

REGION VIII

901 18th STREET - SUITE 500

DENVER COLORADO 80202-2405

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

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EPA has determined that a release of hazardous substances, pollutants, and/or contaminants as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14), has occurred and threatens to



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Sincerely,

Robert L. Duprey, Director  
Hazardous Waste Management Division

Enclosure

: Suzanne J. Bohan, SRC  
D. Scott Brown, RMO  
Cynthia S. Leap

Concurrence:

*Scott Brown* 8MO 5-9-91  
*Daniel E. Ogden* 8MO 5/9/91